

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carlmais Johnson	Team: Team # 5	CCRB Case #: 200800014	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 01/01/2008 3:30 AM	Location of Incident: § 87(2)(b) 7th Precinct Stationhouse	Precinct: 07	18 Mo. SOL 7/1/2009	EO SOL 7/1/2009	
Date/Time CV Reported Tue, 01/01/2008 3:34 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 01/01/2008 3:34 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT David Reilly	04245	929018	007 PCT
2. POM Benjamin Cui	26367	932505	007 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Mcnamara	22960	942173	007 PCT
2. POM Steven Hong	00387	932800	007 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT David Reilly	Force: At § 87(2)(b) in Manhattan, Sergeant David Reilly used physical force against § 87(2)(b)	
B.SGT David Reilly	Abuse: At § 87(2)(b) in Manhattan, Sergeant David Reilly threatened to arrest § 87(2)(b)	
C.POM Benjamin Cui	Abuse: At the 7th Precinct stationhouse, Officer Benjamin Cui did not obtain medical treatment for § 87(2)(b)	

## Synopsis

On January 1, 2008, at approximately 2:40 a.m., Sergeant David Reilly, Officer Benjamin Cui and Officer Steven Hong responded to § 87(2)(b) in Manhattan, in regards to a report of an altercation between § 87(2)(b) and § 87(2)(b). § 87(2)(b) the mother of § 87(2)(b) came to the location upon learning of the altercation and attempted to speak with § 87(2)(b) and § 87(2)(b). Sergeant Reilly directed § 87(2)(b) to move back and when § 87(2)(b) stated that when she refused to comply, Sergeant Reilly allegedly pushed her on her right arm (Allegation A) and told her, "If you don't get out of here, I'll arrest you" (Allegation B). Officer Cui handcuffed § 87(2)(b) and transported him to the 7<sup>th</sup> Precinct stationhouse for arrest processing. § 87(2)(b) alleged that while at the stationhouse, he informed Officer Cui that he was injured and requested medical treatment which he never received (Allegation C).

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This case was reassigned from Investigator Rebecca Besdin to the undersigned investigator on November 18, 2008.

## Summary of Complaint

### Complainant/Victim

§ 87(2)(b)  
On January 1, 2008, at 3:34 a.m., § 87(2)(b) filed a complaint with the Civilian Complaint Review Board via the call-processing system (encl. 2A-2C). § 87(2)(b) provided the agency with a brief telephone statement on January 7, 2008 (encl. 3a-3B) and a sworn statement at the CCRB on February 12, 2008 (encl. 4A-4E). § 87(2)(b) a § 87(2)(b) year old Hispanic female, 5'2" in height and weighing 138 pounds with brown hair, § 87(2)(b) and resides at § 87(2)(b) § 87(2)(g).

On January 1, 2008, at approximately 1:50 a.m., § 87(2)(b) was in her residence when § 87(2)(b) a friend of her son, § 87(2)(b) came to her apartment. Present with § 87(2)(b) was an individual unknown to her, later identified via investigation as § 87(2)(b). § 87(2)(b) inquired as to the whereabouts of § 87(2)(b) and § 87(2)(b) informed him that § 87(2)(b) was in the house of a neighbor, § 87(2)(b) and § 87(2)(b) then left.

A short while later, § 87(2)(b) came to § 87(2)(b)'s apartment and informed her that there had been an altercation involving § 87(2)(b). § 87(2)(b) exited the building and observed § 87(2)(b) seated on a bench outside of the building. On another bench were § 87(2)(b) and § 87(2)(b) the sister of § 87(2)(b). She observed that § 87(2)(b)'s nose appeared to be broken and that § 87(2)(b) was bleeding from the side of his head. Also present at the location was the mother of § 87(2)(b) whom she referred to as § 87(2)(b) and ten to fifteen uniformed officers. § 87(2)(b) asked § 87(2)(b) what had happened and § 87(2)(b) explained that § 87(2)(b) and § 87(2)(b) had attacked him. When § 87(2)(b) asked § 87(2)(b) the same question, he simply replied that they had "just got into something." § 87(2)(b) affirmed that § 87(2)(b) was intoxicated and noted that everyone had been drinking in celebration of the New Year though she could not specify how many drinks he had consumed. § 87(2)(b) denied that she was intoxicated and indicated that she does not drink.

Officer David Reilly, who § 87(2)(b) identified via his shield, approached § 87(2)(b) and told her to get away. § 87(2)(b) described Sergeant Reilly as a white male, approximately 6'2" in height and weighing 185 pounds in his late thirties to early forties; she noted that Sergeant Reilly was dressed in uniform. § 87(2)(b) who indicated that Sergeant Reilly was not courteous in his request and seemed

irate, replied, “I don’t know why I should, I live here.” § 87(2)(b) alleged that Sergeant Reilly then used his left hand to push her on her right arm between her elbow and shoulder, causing her to take a step backwards. § 87(2)(b) claimed that Sergeant Reilly then told her, “If you don’t get out of here I’ll arrest you.” When § 87(2)(b) asked to know for what offense she would be arrested, Sergeant Reilly said something about an investigation. § 87(2)(b) continued to question Sergeant Reilly until § 87(2)(b) told her to move away. § 87(2)(b) who indicated that she was upset and crying at this point in the interaction, walked to the entrance of her building. Sergeant Reilly followed § 87(2)(b) for approximately fifteen feet but then walked away.

§ 87(2)(b) alleged that throughout the incident, § 87(2)(b) was “moaning and groaning” about his hand and repeatedly informed officers that his hand was hurting him. Among the officers he informed, § 87(2)(b) claimed that § 87(2)(b) directly informed Officer Benjamin Cui, whom she identified via his shield, that his hand was swollen and hurting him. § 87(2)(b) described Officer Cui as an Asian male, 6’ in height, approximately 160 pounds and in his late twenties. In her telephone statement, § 87(2)(b) alleged that when § 87(2)(b) complained of the pain in his wrist, Officer Cui responded by pulling on the handcuff and telling him to “take it like a man.” However, no ambulance responded to the location and § 87(2)(b) was taken into police custody and removed from the location.

### **Results of Investigation**

§ 87(2)(b)  
On February 12, 2008, § 87(2)(b) provided a sworn statement to the CCRB (encl. 5A-5F). § 87(2)(b) a § 87(2)(b) year old Hispanic male, 5’8” in height and weighing 140 pounds with black hair, is § 87(2)(b)

On January 1, 2008, at approximately 3:30 a.m., § 87(2)(b) became involved in an altercation with some friends. § 87(2)(b) declined to provide any specifics about the fight § 87(2)(b). He did indicate, however, that he sustained an injury to his wrist when he was thrown to the ground during the altercation.

The police were called and two uniformed officers responded to the location. He described one officer as a thirty year old Asian male, 5’7” in height and weighing approximately 150 pounds and the other as a thirty year old Asian male, 5’8” in height. These officers have been identified as Officer Benjamin Cui and Officer Steven Hong, respectively. Officer Cui questioned § 87(2)(b) while Officer Hong questioned individuals—identified via the investigation as § 87(2)(b) and § 87(2)(b) involved in the altercation. When Officer Cui informed § 87(2)(b) that he was going to be arrested, § 87(2)(b) demanded to know why and Officer Cui explained that § 87(2)(b) was the victim. § 87(2)(b) retorted, “So what am I? I’m injured” and Officer Cui replied, “That’s not what they said over there.”

§ 87(2)(b) § 87(2)(b) s mother, was present at the location and was speaking with different people in order to find out what was going on. § 87(2)(b) indicated that although § 87(2)(b) appeared to be upset, she did not raise her voice. § 87(2)(b) approached § 87(2)(b) as he was being interviewed by Officer Cui and Officer Cui told her to back off. Although § 87(2)(b) attributed these allegations to Officer Cui, the investigation has determined that subject of these allegations is Sergeant Reilly. When § 87(2)(b) informed Sergeant Reilly that § 87(2)(b) was her son, § 87(2)(b) asked § 87(2)(b) to wait until he was finished speaking with the officer. § 87(2)(b) claimed that Sergeant Reilly told § 87(2)(b) “If you don’t back off, I’m going to arrest you.” § 87(2)(b) never saw Sergeant Reilly make physical contact with § 87(2)(b). He believed that another officer used physical force against her and noted that he did not see what happened to § 87(2)(b) when she walked away.

§ 87(2)(b) was placed in handcuffs by Officer Cui and when he asked Officer Cui not to handcuff him too tightly because of the injury to his wrist, Officer Cui complied. § 87(2)(b) claimed that as he and Officer Cui were walking into the 7<sup>th</sup> Precinct Stationhouse, he asked Officer Cui if he could go to the hospital because he thought his wrist was sprained. § 87(2)(b) indicated that he continued to complain about his injury as Officer Cui obtained his pedigree information.

When § 87(2)(b) was placed into a holding cell, he noticed that his wrist had become swollen, discolored and was throbbing in pain. Approximately ninety minutes later, Officer Cui returned to obtain § 87(2)(b)'s fingerprints. § 87(2)(b) explained that he needed to see a doctor because his wrist was injured and showed Officer Cui that his wrist was purple. § 87(2)(b) stated that he asked Officer Cui to take care as he fingerprinted him to avoid aggravating the injury to his wrist. However, when § 87(2)(b) shifted in pain during the fingerprinting process, Officer Cui told him, "Don't be such a wuss. It's probably just a minor sprain." When § 87(2)(b) reiterated his complaint, saying, "You have to get me to a doctor," Officer Cui merely told him to inform the personnel who conduct medical evaluations at Manhattan Central Booking.

An Arrest Photograph of § 87(2)(b) depicts a light-skinned Hispanic male with no visible signs of injury to his head, face or neck (encl. 6). § 87(2)(b) is wearing a dark brown sweater over a white tee-shirt, neither of which appear to contain any blood.

#### Witness Statements

§ 87(2)(b)

On May 22, 2008, § 87(2)(b) provided a brief telephone statement regarding the incident (encl. 7). § 87(2)(b) is a § 87(2)(b) year old Hispanic male.

On the date of incident, § 87(2)(b) got into an altercation with § 87(2)(b) and § 87(2)(b) struck him on the head with a metal pipe. § 87(2)(b) left the location of the fight for approximately two minutes to obtain napkins for his head and when he returned, the police had arrived at the location and had placed § 87(2)(b) in handcuffs. As the officers questioned the individuals involved in the altercation, § 87(2)(b)'s mother—identified by the investigation as § 87(2)(b)—came to the location and asked him what had happened, wanting to know why they had fought when they were best friends. § 87(2)(b) stated that he and § 87(2)(b) got into a "debate" and after two minutes of this, a tall white male uniformed officer, 6'2" in height and weighing 210 pounds, asked § 87(2)(b) to back up. This officer has been identified via the investigation as Sergeant David Reilly. § 87(2)(b) however, did not heed Sergeant Reilly's order and continued to get closer. § 87(2)(b) stated that Sergeant Reilly repeated his request to § 87(2)(b) three to four times and ultimately told her that if she continued to move forward she would be arrested for disorderly conduct. § 87(2)(b) believed that Sergeant Reilly's comments caused § 87(2)(b) to become upset and embarrassed.

§ 87(2)(b) denied that § 87(2)(b) appeared to be injured and further denied that § 87(2)(b) made any complaints of injury or made any request for medical attention. When asked whether he could hear what § 87(2)(b) was saying, § 87(2)(b) indicated that he was standing approximately ten feet from § 87(2)(b) and could hear him say to him, "You're a snitch. Why'd you call the cops?"

§ 87(2)(b)

§ 87(2)(b) sister of § 87(2)(b) provided the CCRB with a sworn statement on July 9, 2008 (encl. 8A-8C). § 87(2)(b) a § 87(2)(b) year old Hispanic female, 5'6" in height and weighing 215 pounds with brown hair, § 87(2)(b) and lives at § 87(2)(b).

On the date of incident, § 87(2)(b) returned from a party and went into her apartment. From the tenth floor she could hear § 87(2)(b) and § 87(2)(b) engaged in a physical fight outside of the building. When she ran downstairs, she found both § 87(2)(b) and § 87(2)(b) were covered in blood. § 87(2)(b) who indicated that she was screaming, asked them what was going on. § 87(2)(b) told her that § 87(2)(b) had struck him on the head with a pipe. § 87(2)(b) observed a pipe laying on the ground, picked it up and asked them whose pipe it was. § 87(2)(b) then took the pipe from her hand. She began to scream for someone to call the police while § 87(2)(b) ran away only to return a short while later. § 87(2)(b) indicated that only § 87(2)(b) appeared to be injured and claimed that § 87(2)(b) never made any statements indicating that he was injured.

Six minutes later, approximately six officers responded to the location in two marked vehicles and one unmarked vehicle. § 87(2)(b) described two of the responding officers, one of whom she described as an

Asian male, 5'10" in height, weighing approximately 210 pounds and approximately thirty-seven years old; the second she described as a twenty-seven year old white male officer weighing approximately 200 pounds with a lean build. These officers have been identified via investigation as Officer Benjamin Cui and Officer Steven Hong. As the officers spoke with § 87(2)(b) and § 87(2)(b) § 87(2)(b)'s mother—§ 87(2)(b)—came to the scene and started yelling at § 87(2)(b) while also asking him what had happened. § 87(2)(b) responded by yelling at § 87(2)(b) about her son's behavior. When § 87(2)(b) asked § 87(2)(b) if he was hurt, § 87(2)(b) replied that he was fine.

§ 87(2)(b) "got into an officer's face" by yelling at him and described this officer as a uniformed white male, 6'2" in height with a big build and approximately thirty-five years old. This officer has been identified via investigation as Sergeant Reilly. Sergeant Reilly informed § 87(2)(b) that she was interrupting an investigation and would have to step back but instead of complying, § 87(2)(b) responded by saying, "How dare you? That's my son." Sergeant Reilly repeated his request for § 87(2)(b) who was approaching him and screaming at him to arrest § 87(2)(b) instead of § 87(2)(b) to back up approximately five times. At some point § 87(2)(b) exclaimed, "You touched me!" referring to Sergeant Reilly. However, she noted that she did not see Sergeant Reilly make any physical contact with § 87(2)(b). Sergeant Reilly told § 87(2)(b) "You need to back up. Do you want to get arrested?"

Although § 87(2)(b) did not hear any officers ask § 87(2)(b) whether he required medical attention, she noted that at the time she was more focused on § 87(2)(b) § 87(2)(b) and § 87(2)(b) waited for an ambulance at the location for approximately one hour. She ultimately drove him to the hospital herself. Because she never heard § 87(2)(b) complain of any injury at the location, she was surprised to learn from § 87(2)(b) a few days later that § 87(2)(b) had sustained a fracture to his wrist.

#### Witnesses Not Interviewed

§ 87(2)(b)  
In his telephone statement to the CCRB, § 87(2)(b) indicated that his friend, § 87(2)(b) was present at the incident location and this is confirmed by police documentation which list § 87(2)(b) as a witness to the incident. Although § 87(2)(b) could not provide any contact information for § 87(2)(b) he informed Investigator Besdin that he would direct § 87(2)(b) to contact her. § 87(2)(b) never contacted the investigator to provide a statement. A search of the White Pages directory on April 10, 2008, and a query of the Lexis-Nexis database on April 14, 2008 yielded negative results (encl. 23G). Complaint Report § 87(2)(b) listed a work address for § 87(2)(b) (encl. 10A-10C); a Please Call letter mailed to this address on § 87(2)(b) on April 9, 2008 was returned by the United States Postal Service indicating that the letter was undeliverable (encl. 24E).

§ 87(2)(b)  
§ 87(2)(b)

In her statement to the CCRB, § 87(2)(b) indicated that her neighbor § 87(2)(b) and his mother, whom she only knew as § 87(2)(b) were present at the incident location when the alleged misconduct occurred. However, on July 9, 2008, § 87(2)(b) denied that he witnessed anything and declined to participate in the investigation (encl. 23K). Because § 87(2)(b) refused to provide a statement to the CCRB, no contact information for § 87(2)(b) was ever obtained.

§ 87(2)(b)

In his statement to the CCRB, § 87(2)(b) indicated that § 87(2)(b) was present at the incident location when the alleged misconduct occurred and provided a telephone for § 87(2)(b). However, a call to the provided telephone number on May 28, 2008 indicated that the number was no longer in service. A search of the White Pages directory and the Lexis-Nexis database on May 28, and May 29, 2008, respectively, yielded negative results (encl. 23J).

§ 87(2)(b)

§ 87(2)(b) additionally indicated that an individual named § 87(2)(b) witnessed the incident and provided a telephone number for him. Investigator Besdin called the provided number on May 28 and May 29, 2008 and left voicemail messages asking § 87(2)(b) to contact the agency. On May 30, 2008, an unidentified female contacted the agency and left a voicemail directing the investigator to contact § 87(2)(b) at another number;

however two calls to this provided number later in the day yielded negative results. A query of the Lexis-Nexis database on May 29, 2008 yielded the surname § 87(2)(b) as well as an address. Please Call letters were mailed to § 87(2)(b) on May 29 and September 11, 2008; neither letter was returned by the United States Postal Service (encl. 23J). To date, § 87(2)(b) has not contacted the CCRB to provide a statement in connection with this investigation.

§ 87(2)(b)

Sprint Communications records indicate that § 87(2)(b) who resides in the building where the incident occurred, called 911 to report the altercation between § 87(2)(b) and § 87(2)(b) (encl. 21a-21B). However, a call on May 21, 2008 to the telephone number listed in the Sprint Report indicated that the telephone line was no longer in service. A Please Call letter mailed to § 87(2)(b) on May 21, 2008, and was never returned by the United States Postal Service (encl. 23I). § 87(2)(b) never responded to attempts to contact him.

#### Police Officer Interviews

##### ***Sergeant David Reilly, of the 7th Precinct (Subject Officer)***

Sergeant David Reilly, a § 87(2) year old white male, 6'5" in height and weighing 260 pounds with brown hair and brown eyes, has been a member of the NYPD for seven years. Sergeant Reilly had several entries in his Memo Book regarding this incident (encl. 13A-13C). At 2:40 a.m., he noted that he received a report of a dispute at § 87(2)(b) and upon arrival at the location, encountered a Hispanic male—identified via investigation as § 87(2)(b)—with a head injury. At 3:15 a.m., he noted that an arrest had been made of one Hispanic male for § 87(2)(b) and indicated that this Hispanic male—identified via investigation as § 87(2)(b) had been in possession of a metal bar that had been recovered at the location. § 87(2)(b) was transported from the location in vehicle # 2480. At 3:25 a.m., § 87(2)(b) was transported to the hospital in a private vehicle and five minutes later Sergeant Reilly resumed patrol.

Sergeant Reilly was interviewed at the CCRB on April 30, 2008 (encl. 14A-14B).

On January 1, 2008, Sergeant Reilly worked from 5:50 p.m. the previous evening to 9:10 a.m. and was assigned to the Anti-Crime unit with Officer Cui and Officer Hong. Sergeant Reilly indicated that he was dressed in uniform and assigned to an unmarked vehicle, which he described as a black Chevrolet Crown Victoria.

On January 1, 2008, at approximately 2:45 a.m., there was a report of a dispute at § 87(2)(b) he did not recall what information was provided in the radio report. When Sergeant Reilly, Officer Cui and Officer Hong arrived at the location, they observed a Hispanic male, identified via the investigation as § 87(2)(b) bleeding heavily from the head. § 87(2)(b) informed them that he had been drinking with a friend of his, identified via investigation as § 87(2)(b) when they began to fight. He indicated that during the fight, § 87(2)(b) had struck him in the head with a pipe. § 87(2)(b) pointed out § 87(2)(b) who was standing a few feet away and indicated that he was the one that had hit him. When asked about § 87(2)(b)'s appearance, Sergeant Reilly stated that § 87(2)(b) looked like "just somebody on the block who was standing there."

Sergeant Reilly directed either Officer Cui or Officer Hong, he did not recall which, to speak with § 87(2)(b). After the officers verified that § 87(2)(b) was the perpetrator, they placed him under arrest. Sergeant Reilly noted that the arrest of § 87(2)(b) occurred approximately fifteen minutes after § 87(2)(b) pointed him out and explained that they spent this time interviewing witnesses and waiting for an ambulance to arrive at the scene to treat § 87(2)(b). When asked why only § 87(2)(b) was placed under arrest, Sergeant Reilly explained that § 87(2)(b) did not appear to be injured while § 87(2)(b) was severely injured. Sergeant Reilly did not place § 87(2)(b) in handcuffs and did not recall which officer performed this action, despite standing only twenty feet away when this occurred. He had no recollection that he or any officer asked § 87(2)(b) whether he was injured or whether he needed medical attention.

While waiting for an ambulance for § 87(2)(b) and an escort for § 87(2)(b) § 87(2)(b)'s mother, identified via the investigation as § 87(2)(b) came to the scene. § 87(2)(b) repeatedly

approached § 87(2)(b) and shouted at him, demanding that he answer her questions. § 87(2)(b) whom Sergeant Reilly described as “excited,” was two feet away from § 87(2)(b). Sergeant Reilly stepped between § 87(2)(b) and § 87(2)(b) and told her to step away because it was an official police investigation and § 87(2)(b) was considered to be the victim of a crime. Sergeant Reilly further informed § 87(2)(b) that § 87(2)(b) would be arrested for § 87(2)(b). § 87(2)(b) started shouting, saying that she intended to call the Internal Affairs Bureau. § 87(2)(b) told him that she was allowed to remain and did not have to back away if she did not wish to. Sergeant Reilly reiterated that she could only observe the scene from a distance. § 87(2)(b) initially walked away but then returned. When asked whether he made physical contact with § 87(2)(b), Sergeant Reilly stated that he could not recall having taken such an action and did not believe that he did. Sergeant Reilly ultimately was able to get her to keep a distance of approximately thirty feet, but denied that he escorted her away. Sergeant Reilly affirmed that at some point during his interaction with § 87(2)(b) he told her that she would be placed under arrest if she did not stop badgering § 87(2)(b). When asked for what offense § 87(2)(b) could have been arrested, Sergeant Reilly noted obstruction of governmental administration and possibly additional charges.

Sergeant Reilly briefly spoke with § 87(2)(b) to ask him what happened. He described § 87(2)(b) as being highly intoxicated and explained that he came to this because of § 87(2)(b)'s manner of speech—excited and somewhat slurred—as well as § 87(2)(b)'s own statements that he had been drinking. Sergeant Reilly was not in the vehicle that transported § 87(2)(b) back to the 7<sup>th</sup> Precinct stationhouse as he remained at the location waiting for an ambulance for § 87(2)(b). After § 87(2)(b) left the location, Sergeant Reilly resumed patrol.

***Officer Benjamin Cui, of the 7<sup>th</sup> Precinct (Subject Officer)***

Officer Benjamin Cui is a § 87(2)(b) year old Asian male, 5’8” in height and weighing 180 pounds with black hair and brown eyes. Officer Cui has been a member of the New York City Police Department for five years. Officer Cui had two entries in his Memo Book regarding this incident (encl. 9A-9B). At 3:05 a.m., Officer Cui noted that he had stopped one individual for § 87(2)(b) and at 3:15 a.m., he noted that one individual had been arrested. He further indicated that Sergeant David Reilly had recovered a metal rod at the location and that Officer Steven Hong had interviewed the witnesses.

On January 1, 2008, Officer Cui completed Complaint Report § 87(2)(b) and Arrest Report # § 87(2)(b) regarding the arrest of § 87(2)(b) (encl. 10A-10C and encl. 11). The narratives of these forms, which are identical, state that victim § 87(2)(b) alleged that § 87(2)(b) “§ 87(2)(a) 160.50 § 87(2)(a) 160.50” The Complaint Report indicates that a metal rod was vouchered as arrest evidence.

Officer Cui was interviewed at the Civilian Complaint Review Board on April 10, 2008 (encl. 12A-12B).

On January 1, 2008, Officer Cui worked from 4:00 p.m. the previous evening to 4:00 a.m. that day. He was assigned to Anti-Crime and worked in plainclothes with Sergeant Reilly and Officer Hong in an unmarked red van.

On January 1, 2008, at approximately 3:00 a.m., Officer Cui, Sergeant Reilly and Officer Hong were driving past § 87(2)(b) a residential neighborhood of housing projects, when they observed § 87(2)(b) and § 87(2)(b) fighting with one another. The officers stopped their vehicle and approached § 87(2)(b) and § 87(2)(b) at which point they realized that § 87(2)(b) was holding a metal rod. Upon seeing the officers, § 87(2)(b) dropped the rod and began to run away. Officer Cui ordered § 87(2)(b) to stop and lay down on the ground; § 87(2)(b) complied. However, as he lay on the ground, § 87(2)(b) repeatedly yelled at § 87(2)(b) “I’m going to fuck you up.” Officer Cui indicated that although § 87(2)(b) had blood on his face and shirt, he did not appear to be injured. Officer Cui asked § 87(2)(b) whether he was injured and § 87(2)(b) said that he was not hurt but informed him that § 87(2)(b) was injured. § 87(2)(b) who had remained silent during this time, was covered in blood.

Because § 87(2)(b) repeatedly attempted to rise from the ground, Officer Cui decided to place him in handcuffs to prevent him from further injuring himself and noted that although § 87(2)(b) had denied that he was injured, he was concerned that § 87(2)(b) might indeed be injured due to the presence of blood. § 87(2)(b) whom Officer Cui described as “emotional,” also kept looking at the metal rod, leading Officer Cui to believe that he intended to pick it up. Although § 87(2)(b) told him that he did not need to be placed in handcuffs because he would listen to him, § 87(2)(b) never made any comments about pain to his wrist as he was being handcuffed. Officer Cui did note that § 87(2)(b) denied involvement and indicated that someone else had attacked § 87(2)(b).

While Sergeant Reilly and Officer Hong remained with § 87(2)(b) § 87(2)(b) the mother of § 87(2)(b) approached him and thanked him for handcuffing § 87(2)(b) to prevent him from injuring himself. Officer Cui described § 87(2)(b) who was crying, as nice and indicated that she appeared to be concerned for her son. Officer Cui had no recollection that § 87(2)(b) spoke with Sergeant Reilly or Officer Hong.

Because § 87(2)(b) had been in possession of the weapon and because § 87(2)(b) was injured, the decision was made to place § 87(2)(b) under arrest. Officer Cui stated that an ambulance was called for § 87(2)(b) and he was subsequently transported to the hospital by emergency medical service.

Officer Cui denied that § 87(2)(b) made any complaints of injury to his wrist during the drive to the 7<sup>th</sup> Precinct stationhouse. At the stationhouse, § 87(2)(b) was compliant. When § 87(2)(b) appeared before the desk sergeant, the desk sergeant was concerned because of the blood and asked § 87(2)(b) whether he was injured. § 87(2)(b) again replied that § 87(2)(b) was injured but he was not. Officer Cui denied that § 87(2)(b) appeared to be injured at the stationhouse and further denied that § 87(2)(b) gave any indication that he was injured. Officer Cui also denied that there was any difficulty fingerprinting § 87(2)(b) and denied that he told § 87(2)(b) “Don’t be such a wuss. It’s just a minor sprain.” Officer Cui never learned that § 87(2)(b) asked any other officers for medical attention.

***Officer Steven Hong, of the 7<sup>th</sup> Precinct (Witness Officer)***

Officer Steven Hong, a § 87(2)(b) year old Asian male, 6’1” in height and weighing 170 pounds with black hair and brown eyes, has been a member of the NYPD for five years. Officer Hong had no entries in his Memo Book pertaining to this incident and had notations regarding this incident (encl. 15A-15C).

Officer Hong was interviewed at the CCRB on April 30, 2008 (encl. 16A-16B).

On January 1, 2008, Officer Hong worked from 6:00 p.m. the previous evening to 8:00 a.m. and was assigned to the Anti-Crime unit. He worked in plainclothes with Sergeant Reilly and Officer Cui and was assigned to an unmarked vehicle.

On January 1, 2008, at approximately 3:30 a.m., Officer Hong, Sergeant Reilly and Officer Cui responded to a report of an assault in progress at § 87(2)(b) that indicated that a male was being struck with a pipe outside of the location. When they arrived at the location, they observed the two combatants, identified via investigation as § 87(2)(b) and § 87(2)(b) as well as one male witness and one female witness, identified via investigation as § 87(2)(b) and § 87(2)(b). § 87(2)(b) informed the police that there had been a verbal argument followed by a physical fight during which time § 87(2)(b) had been struck in the head several times with a pipe. § 87(2)(b) then approached the officers. Officer Hong described § 87(2)(b) as being “out of it” and believed that this was because he had lost a significant amount of blood due to his head wound. § 87(2)(b) repeatedly touched his wound and complained of pain to his head. § 87(2)(b) and § 87(2)(b) who indicated that he had witnessed the altercation, pointed out § 87(2)(b) and identified him as the perpetrator.

Officer Hong did not interact with § 87(2)(b) and instead remained with § 87(2)(b) and § 87(2)(b). Officer Hong did not recall what § 87(2)(b) was doing but thought that he had a pipe in his hand. Officer Hong initially stated that § 87(2)(b) smelled of alcohol but later clarified that it was § 87(2)(b) who appeared to be intoxicated. § 87(2)(b) did not have any blood on him, did not appear to be injured and did not complain of having sustained any injuries.



Officer Hong was standing approximately fifteen feet away from § 87(2)(b) as he was placed in handcuffs and denied that § 87(2)(b) made any complaints of injury during this process. He did, however, note that § 87(2)(b) said that he had not done anything wrong. Officer Hong did not hear either Sergeant Reilly or Officer Cui ask § 87(2)(b) whether he required medical attention. At some point after § 87(2)(b) had been placed in handcuffs, § 87(2)(b) arrived at the location. Officer Hong heard § 87(2)(b) yelling at Sergeant Reilly, asking him why they were arresting her son. He denied that he heard Sergeant Reilly inform § 87(2)(b) that she could be arrested for her behavior for did he see Sergeant Reilly push § 87(2)(b). § 87(2)(b) was transported from the location by unknown officers; Officer Hong stated that he did not see § 87(2)(b) at the stationhouse.

***Officer John McNamara, of the 7<sup>th</sup> Precinct (Witness Officer)***

Officer John McNamara, a § 87(2)(b) year old white male, 6' in height and weighing 205 pounds with brown hair and blue eyes, has been a member of the NYPD for two years. Officer McNamara had no notations in his Memo Book pertaining to this incident and only had notations regarding the beginning and end of his tour (encl. 17A-17C).

On January 1, 2008, Officer McNamara was assigned to New Years Detail and worked in uniform from 6:00 p.m. the previous evening to 2:35 a.m. with Officer Steven Stiller. They were assigned to a marked vehicle. Officer McNamara was interviewed at the CCRB on October 16, 2008 at which time he indicated that he had no recollection of this incident despite being presented with details of the incident and being shown photographs (encl. 18A-18B).

**Medical Documentation**

§ 87(2)(b)

On § 87(2)(b), § 87(2)(b) was seen at the § 87(2)(b) Emergency Department (encl. 19A-19F). § 87(2)(b) reported that he sustained an injury when he fell on his flexed left wrist during an assault that morning. § 87(2)(b) denied that he had sustained any injury to his head. § 87(2)(b) assessed the pain as 10 on a scale of 10 and described the pain as "sharp." Medical personnel noted that § 87(2)(b) had swelling, tenderness and ecchymosis to his left wrist as well as a limited range of motion. § 87(2)(b) was diagnosed with a non-displaced scaphoid fracture and was given Motrin pain reliever and a fracture splint. § 87(2)(b)'s aftercare suggestions direct him to obtain follow up treatment on the next day.

§ 87(2)(b)

On § 87(2)(b), § 87(2)(b) was seen at § 87(2)(b) Medical Services Department for treatment of his scaphoid fracture which he indicated he sustained during an altercation (encl. 20A-20L). § 87(2)(b) was directed to obtain treatment from the Orthopedic Hand department. On § 87(2)(b), § 87(2)(b) had operative reduction of the fracture in which a screw was placed in the wrist to keep the bone fragments together. After several months of follow up examinations, the surgery was deemed to have been successful.

**Police Documentation**

Sprint Communications Report § 87(2)(b) indicates that on January 1, 2008, at 2:40 a.m., § 87(2)(b) called 911 to report that three males were fighting outside of § 87(2)(b) (encl. 21A-21B). A unit responded to the location at 2:47 a.m. One minute later the responding officers reported that there were two males at the location with head injuries that were bleeding; the officers requested that two ambulances respond to the location. At 3:15 a.m., the responding officers sent another request for the ambulances. At the same time, the officers noted that one male had been placed under arrest. At 3:24 a.m., the officers canceled their previous request for an ambulance and noted as their final disposition that an arrest had been made.

The 7th Precinct Command Log contains one entry pertaining to the arrest of § 87(2)(b) (encl. 22). Under the physical and mental condition section, § 87(2)(b) is initially listed as being apparently normal. This observation was then crossed out and replaced with a notation indicating that he was intoxicated with

alcohol. § 87(2)(b) was transported from the stationhouse to Manhattan Central Booking at 9:55 a.m. There are no notations under this entry regarding a request for medical attention or any observed injuries.

A request for the Medical Treatment of Prisoner Report was sent to the 7<sup>th</sup> Precinct and the Manhattan Court section. Both requests were returned with notations indicating that no such records were located (encl. 25E-25F).

#### Complainant/Victim Criminal Conviction History

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

#### CCRB Histories

Sergeant David Reilly has had no substantiated CCRB allegations during his seven-year tenure with the New York City Police Department (encl. 1A). Officer Benjamin Cui has had no substantiated CCRB allegations during his five-year tenure with the NYPD (encl. 1B).

§ 87(2)(b) and § 87(2)(b) have filed one prior complaint with the CCRB (encl. 1C-1D) § 87(2)(b)

#### Conclusions and Recommendations

##### Officer Identification

§ 87(2)(b) alleged that as she spoke with § 87(2)(b) outside of § 87(2)(b) in Manhattan, an officer, whom she identified via his shield as “Reilly,” pushed her on the shoulder (Allegation A) and threatened to arrest her (Allegation B) when she would not move back. She described this officer as being a white male in his later thirties or early forties, approximately 6’2” in height and weighing 185 pounds. Sergeant David Reilly, a § 87(2)(b) year old white male, 6’5” in height and weighing 260 pounds, affirmed that he interacted with § 87(2)(b) and informed her that she would be arrested if she did not move from the location. § 87(2)(g)

§ 87(2)(b) alleged that while at the 7<sup>th</sup> Precinct stationhouse, his arresting officer refused to obtain medical attention despite his repeated requests (Allegation C). § 87(2)(b) described his arresting officer as a thirty year old Asian male, 5’7” in height and weighing approximately 150 pounds. § 87(2)(b) further indicated that this was the officer who primarily interacted with him prior to his arrest. Officer Benjamin Cui, a § 87(2)(b) year old Asian male, 5’8” in height and weighing 180 pounds, affirmed that he was the officer that interviewed § 87(2)(b) prior to placing him in handcuffs and further indicated that he was the officer that accompanied § 87(2)(b) to the stationhouse and completed paperwork in regards to his arrest. § 87(2)(g)

##### Agreed Facts and Issues In Dispute

§ 87(2)(g)

§ 87(2)(b) All parties agree that when § 87(2)(b) exited came to the scene at § 87(2)(b) she spoke with § 87(2)(b) at some length, demanding to know what had happened and was asked by Sergeant Reilly to move away. § 87(2)(b) alleged that Sergeant Reilly pushed her on the arm (Allegation A) and told her, “If you don’t get out of here I’ll arrest you” (Allegation B). While Sergeant Reilly affirmed that he informed § 87(2)(b) that she could be arrested, he had no recollection that he made physical contact with her.

§ 87(2)(b) alleged that when he was at the 7<sup>th</sup> Precinct stationhouse he asked Officer Cui if he could go to the hospital because his wrist was injured but never received the requested medical attention (allegation C). Officer Cui, however, denied that § 87(2)(b) ever requested medical attention and indicated that § 87(2)(b) repeatedly indicated that he was fine. § 87(2)(g)

#### Assessment of Evidence

§ 87(2)(g)  
§ 87(2)(b) stated that when she arrived at the location, she observed that § 87(2)(b)'s nose appeared to be broken. § 87(2)(b) however, made no mention of an injury to his nose § 87(2)(g) there was no indication of any injury to his face in an Arrest Photograph taken several hours after his arrest. § 87(2)(b) further claimed that § 87(2)(b) was “moaning and groaning” about an injury to his wrist, repeatedly informing officers in his vicinity about the injury. Further, in her telephone statement, § 87(2)(b) claimed that when § 87(2)(b) informed Officer Cui about the injury to his wrist, Officer Cui responded by pulling on his handcuffs and telling him to “take it like a man.” However, in § 87(2)(b)'s statement, he indicated that he merely asked Officer Cui not to handcuff him tightly when he was being placed in handcuffs, which he noted Officer Cui did. § 87(2)(b) made no statements indicating that Officer Cui taunted him. § 87(2)(g)

All parties confirm that Sergeant Reilly informed § 87(2)(b) that he would arrest her if she did not step back as well as the circumstances that lead to this statement (Allegation B). § 87(2)(g)

§ 87(2)(b) This physical force, though mild, was not witnessed by anyone in the vicinity—namely § 87(2)(b) with whom she was arguing. Even § 87(2)(b) claimed not to have witnessed Sergeant Reilly make any physical contact with § 87(2)(b) § 87(2)(g)

§ 87(2)(b) claimed that he first mentioned the injury to his wrist when Officer Cui informed him that he was going to be arrested and then as he was being placed in handcuffs. He further alleged that at the 7<sup>th</sup> Precinct stationhouse, he requested medical treatment as he was being walked into the stationhouse and later when Officer Cui obtained his fingerprints. § 87(2)(b) corroborated that § 87(2)(b) informed Officer Cui of his condition at the time of his arrest. § 87(2)(g)

§ 87(2)(b) did not indicate that his wrist became swollen until he was at the stationhouse. Witnesses § 87(2)(b) and § 87(2)(b) denied that § 87(2)(b) made any claims at the scene that his wrist was injured and § 87(2)(b) further stated that when § 87(2)(b) asked § 87(2)(b) if he was injured, he replied that he was fine. § 87(2)(g)

#### **Allegation A) Force: In front of § 87(2)(b) in Manhattan, Sergeant David Reilly used physical force against § 87(2)(b)**

Upon arriving at the scene, § 87(2)(b) began to question § 87(2)(b) about the fight. In her statement, § 87(2)(b) described her behavior mildly, indicating that she merely asked him what had happened. § 87(2)(g) § 87(2)(b) stated that he and § 87(2)(b) were engaged in a “debate” that lasted several minutes and § 87(2)(b) stated that § 87(2)(b) and § 87(2)(b) were yelling at one another about the incident. Statements from several witnesses indicate that Sergeant Reilly

repeatedly asked § 87(2)(b) to step away from § 87(2)(b) which she refused to do. § 87(2)(b) alleged that when she refused to comply, Sergeant Reilly pushed her on her right arm between her elbow and shoulder, causing her to take a step back. Sergeant Reilly, however, had no recollection that he made any physical contact with § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation B) Abuse of Authority: In front of § 87(2)(b) in Manhattan, Sergeant David Reilly threatened to arrest § 87(2)(b)**

§ 87(2)(b) further alleged that Sergeant Reilly told her, “If you don’t get out of here I’ll arrest you.” Sergeant Reilly corroborated the accounts of § 87(2)(b)’s behavior and confirmed that he informed § 87(2)(b) that she would be arrested for governmental administration if she did not refrain from badgering § 87(2)(b) and interfering in an official police investigation. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation C) Abuse of Authority: At the 7<sup>th</sup> Precinct stationhouse, Officer Benjamin Cui did not obtain medical attention for § 87(2)(b)**

§ 87(2)(b) alleged that as he was being brought into the 7<sup>th</sup> Precinct stationhouse, he asked Officer Cui for medical treatment as he believed his left wrist was sprained. He further alleged that he repeated his request for medical attention when Officer Cui obtained his fingerprints. Officer Cui, however, denied that § 87(2)(b) made any such request and testified that on two occasions when he asked § 87(2)(b) whether he was injured, § 87(2)(b) stated that he was fine. Medical records confirm that § 87(2)(b) sustained serious injuries to his wrist that required surgery to correct and that by the evening of § 87(2)(b), he was experiencing a significant amount of pain. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: